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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/373,141
Filing Date: August 12, 1999
Appellant(s): ISSA, GABRIEL N.

Benjamin C. Stasa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/03/2005
appealing from the Office action mailed 8/19/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

09/373,143 Gabriel N. Issa

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,260,024 Shkedy 7-2001

"E-Commerce/Buying Service Counts on Strength in Numbers",
The Washington Post, Newsday. Long Island, N.Y.: Mar 22, 1999.
pg. C. 07.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shkedy (US 6,260,024) in view of Applicant's admitted prior art in specification (SEE page 1 , line 12 to page 2, line 17) .

With regard to claim 1 Shkedy suggest a method for conducting an online auction of a monetary amount for a specified category of items (SEE Shkedy column 1 , lines 7-16 ; "sellers over a network"... "such as the internet", column 3, lines 54-57 "A seller will be selected whose bid is the best. e.g.

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lowest price" and further see column 5, lines 9-10 " buyer selects a category of goods or service to be purchased".),

the method comprising: receiving at a computer site at least one bid having a discount rate for the specified category of items being auctioned from a plurality of sellers registered to participate in the auction (SEE Shkedy column 1, lines 7-16 , "method for facilitating a transaction between a plurality of buyers, an intermediary, and a plurality of sellers over an electronic network.", column 7, lines 21-25 , "buyers could indicate a minimum discount off the maximum offer price provided by the central controller 200 that a buyer would be willing to accept. The seller would then be notified of a maximum price he had to beat in order to bid. [it is obvious to one of ordinary skill that this language is suggestive of a seller needing to be able to figure out what the BID price needs to be in order to meet the "minimum discount off" as suggested by Shkedy in order to have a successful bid and sellers are motivated to do what ever it takes to make a sale as long as they can make some profit of the volume of sales.], and see column 6, lines 16-18

"the seller may be required to provide qualifications in order to view the PPOS of a given category" and column 10, lines 20-21

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"Upon registration, the seller may be required to demonstrate evidence of ability to deliver on goods in each category" and in addition see column 7, line 26-41 whereby it teaches an example wherein the whole category of Office Supply is discounted 5% for a collective buyer pool is pre-negotiated and see column 10 lines 19-20 "discount schedule for large quantities etc.")

receiving at the computer site a commitment to buy within the specified category of items at a minimum discount rate from at least one buyer registered to participate in the auction (SEE Shkedy column 8, lines 49-50, "A buyer is able to communicate his commitment to the pool" , column 7, lines 21-25 , "buyers could indicate a minimum discount off the maximum offer price provided by the central controller 200 that a buyer would be willing to accept" . column 3, lines 5-8, "Another object of the present invention is to allow an intermediary to bind all buyers to the pool before the sale or bidding occurs", SEE column 5, lines 55-60, "The buyer has now consented to entering into a legally binding contract with the intermediary and will accept the best price that the intermediary determines in the bidding process subject to the condition that the buyer will pay no more for the item or service than the stipulated maximum offer price.", SEE column 10 , lines 1-8 , "Buyer database 255

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maintains data on buyers with fields such as name, address, telephone number, credit card number, ID number, social security number, electronic mail address, smart card ID, credit history, public/private key information etc. This information is obtained when the buyer first registers with the system")

and declaring at least one successful seller of the value amount for the specified category of items based on the bid from the successful seller or, sellers having the greatest discount rate greater than or equal to the minimum discount rate and best meeting the buyer's individual conditions. (SEE Shkedy column 3, lines 54-57 "A seller will be selected whose bid is the best. e.g. lowest price" [It is inherent that the seller with the "lowest price" would effectively also have the "'greatest discount rate'" in the Shkedy method and would have been a simple matter of math to figure out what the actual discount is based on what the lowest bid price was and a seller using the Shkedy method would have been motivated to in addition to telling the buyer what the lowest price bid was tell the buyer what discount that price inherently represents for example 75 % off because that is a positive inherent fact about the lowest price and buyer is more likely to be happy with his purchase when he knows how much that lowest price saves him), SEE column 5, lines 12-14, "At step 44, the buyer 16 adds a quantity

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specified along with any other required buyer specified conditions", SEE column 7, lines 21-25 , "buyers could indicate a minimum discount off the maximum offer price provided by the central controller 200 that a buyer would be willing to accept"

With further regard to claim 1 Shkedy does not directly teach his method whereby, "A seller will be selected whose bid is the best. e.g. lowest price" is a type of "auction" as explicitly claimed in the preamble.

Applicant teaches in his admitted prior art sections about a "reverse type auction" which reads on Shkedy's above stated method. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Shkedy title of his method "A GLOBAL BILATERAL BUYER-DRIVEN SYSTEM" and simply just call it a "REVERSE AUCTION" as suggested by applicant's admitted prior art because one would have been motivated to call it "a reverse type auction" when advertising the auction because that was the standard phrase used for this type of auction and therefore the buying public would then be more likely to participate in the auction they clearly understand.

With regard to claim 2 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in

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claim 1 wherein a commitment to buy an undiscounted value amount at a minimum discount rate is received from each of a plurality of buyers and wherein the method further comprises pooling the plurality of buyers to obtain various pooled award amounts and wherein the at least one successful seller is declared of his respective pooled award amount for the specified category of items (SEE Shkedy column 2, lines 43-67).

With regard to claim 3 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the items are products (SEE Shkedy column 2, lines 43-67).

With regard to claim 4 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the items are services (SEE Shkedy column 2, lines 43-67)

With regard to claim 5 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 2 wherein the plurality of buyers are independent and/or unrelated (SEE Shkedy column 2, lines 43-67).

With regard to claim 6 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 2 further comprising receiving at the computer site information representing a minimum award amount or predefined

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sequence of minimum award amounts corresponding to a predefined sequence of discount bids that each seller is willing to accept from the pooled buyers for a given category (SEE Shkedy column 7, lines 21-25, and column 29, lines 25-column 32, line 10).

With regard to claim 7 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 2 further comprising receiving at the computer site information representing a maximum award amount that a seller is capable of accepting and willing to accept from the pooled buyers (SEE Shkedy column 17, line 23-column 18, line 36).

With regard to claim 8 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 further comprising receiving at the computer site information representing a method of guaranteeing the value amount from the at least one buyer (SEE Shkedy column 22, line 61-column 23, line 50).

With regard to claim 9 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein at least one seller is pre approved to sell the specified category of items (SEE Shkedy column 23, line 51-column 24, line 45).

With regard to claim 10 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in

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claim 1 further comprising receiving at the computer site information representing any sellers unacceptable to the at least one buyer (SEE Shkedy column 3, line 1-column 4, line 59).

With regard to claim 11 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the computer site is a Web site (SEE Shkedy column 1, line 31-column 2, line 23).

With regard to claim 12 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the auction is a reverse auction (SEE Shkedy column 21, line 3-column 22, line 25)

With regard to claim 13 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the auction ends a fixed period of time after the auction begins (SEE Shkedy column 22, line 61-column 23, line 28).

With regard to claim 14 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 further comprising receiving at the computer site a command from the at least one buyer to try to end the auction for the at least one buyer wherein a successful seller of the value amount for the at least one buyer can be declared before

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the preset auction expiration time (SEE Shkedy column 25, line 20-column 26, line 45).

With regard to claim 15 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 further comprising receiving at the computer site a command from the at least one buyer to try to end the auction for the at least one buyer wherein a successful seller of the value amount for the at least one buyer can be declared before the end of the auction (SEE Shkedy column 26, lines 46-64).

With regard to claim 16 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the successful seller is determined by the buyer's pre-defined conditions (SEE Shkedy column 27, line 8-column 27, line 62).

With regard to claim 17 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the seller with the highest bid for discount rate is the successful seller (SEE Shkedy column 28, line 62-column 29, line 18).

With regard to claim 18 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein there is more than one successful seller for a

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given auction (SEE Shkedy column 29, line 25-column 32, line 10).

With regard to claim 19 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein a buyer account is assigned to the registered buyer (SEE Shkedy column 6, line 18-column 7, line 4).

With regard to claim 20 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 19 wherein the buyer account includes various inter-linked sub-accounts (SEE Shkedy column 17, lines 23-60).

With regard to claim 21 the combination of Shkedy and Applicants admitted prior art teaches 21 the method as claimed in claim 20 wherein the sub-accounts are linked to at least one external account of the registered buyer held by a financial institution (SEE Shkedy column 18, lines 23-36).

With regard to claim 22 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 21 wherein the buyer's funds can be transferred between the various sub-accounts and also between the sub-accounts and external accounts held by other financial institutions (SEE Shkedy column 20, line 21-35).

With regard to claim 23 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in

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claim 22 wherein the registered buyer can transfer funds or reassign buying power amounts to the account of another registered buyer or a registered seller (SEE Shkedy column 21, lines 3-45).

With regard to claim 24 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein a seller account is assigned to each registered seller (SEE Shkedy column 21 , line 52-column 22, line 25) .

With regard to claim 25 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 24 wherein the seller account includes various inter-linked sub-accounts (SEE Shkedy column 3, line 1-column 4, line 59, and column 17, line 23-column 18, line 36).

With regard to claim 26 the combination of Shkedy and Applicants admitted prior art teaches 26. The method as claimed in claim 25 wherein the sub-accounts are linked to at least one external account of the at least one seller held by a financial institution (SEE Shkedy column 21, lines 3-45).

With regard to claim 27 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 26 wherein the seller's funds can be transferred between the various sub-accounts and also between the sub-accounts and

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external accounts held by other financial institutions (SEE Shkedy column 21, line 52-column 22, line 7).

With regard to claim 28 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 27 wherein the at least one registered seller can transfer funds or reassign buying power amounts to the account of another registered buyer or a registered seller (SEE Shkedy column 22, line 8-25).

With regard to claim 29 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the step of receiving at least one bid includes receiving a bidding table for at least one seller in which the at least one seller commits to a sequence of bids corresponding to a sequence of value amounts for a given category (SEE Shkedy column 22, line 61-column 23, line 50).

With regard to claim 30 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein each of the sellers is pre approved to sell the specified category of items (SEE Shkedy column 23, line 51-column 24, line 45).

With regard to claim 31 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the auction ends an undetermined period of time

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after the auction begins (SEE Shkedy column 17, line 23-column 18, line 36).

With regard to apparatus claim 32 the combination of Shkedy and Applicants admitted prior art was found already above in method claim 1 to read on most of the limitations of apparatus claim 32 and in addition the applicant is claiming a computer site for conducting an online auction (See Shkedy figure 1 item 200 "CENTRAL CONTROLLER" which reads on computer site), a set of related documents and associated files (SEE Shkedy figure 1, item 265, "PPO DATABASE" where documents and files are stored also see figure 2 item 250 "DATABASE STORAGE DEVICE"), and a server for serving up the set of related documents and associated files to a plurality of I/O devices to provide buyers and sellers with capability to participate in the auction (see Shkedy figure 1 item 200 "CENTRAL CONTROLLER" which reads on server also see column 5, lines 5-6 "'The central controller 200 is preferably located at a remote server'") the server being programmed with application software to (it is essential to proper that a server be programmed with application software)

With regard to claim 33 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein a commitment to buy an undiscounted value amount at a minimum discount rate is received from each of

a plurality of buyers and wherein the server is further programmed to pool the plurality of buyers to obtain various pooled award amounts and wherein the at least one successful seller is declared his respective pooled award amount for the specified category of items (SEE Shkedy column 2, lines 43-67).

With regard to claim 34 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the items are products (SEE Shkedy column 2, lines 43-67).

With regard to claim 35 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the items are services (SEE Shkedy column 2, lines 43-67).

With regard to claim 36 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 33 wherein the plurality of buyers are independent and/or unrelated (SEE Shkedy column 2, lines 43-67).

With regard to claim 37 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 33 further comprising receiving at the computer site information representing a minimum award amount or predefined sequence of minimum award amounts corresponding to a predefined sequence of discount bids that each seller is willing

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to accept from the pooled buyers for a given category (SEE Shkedy column 7, lines 21-25, and column 29, line 25-column 32, line 10).

With regard to claim 38 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 33 further comprising receiving at the computer site information representing a maximum award amount that a seller is capable of accepting and willing to accept from the pooled buyers (SEE Shkedy column 17, line 23-column 18, line 36).

With regard to claim 39 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the server is further programmed to receive information representing a method of guaranteeing the value amount from the at least one buyer (SEE Shkedy column 22, line 61-column 23, line 50).

With regard to claim 40 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein at least one seller is pre-approved to sell the specified category of items (SEE Shkedy column 23, line 51-column 24, line 45).

With regard to claim 41 the combination of Shkedy and Applicants admitted prior art teaches the computer site as

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claimed in claim 32 wherein the server is further programmed to receive information representing any sellers unacceptable to the at least one buyer (SEE Shkedy column 3, line 1-column 4, line 59).

With regard to claim 42 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the computer site is a Web site (SEE Shkedy column 1, line 31-column 2, line 23).

With regard to claim 43 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the auction is a reverse auction (SEE Shkedy column 21 , line 3-column 22, line 25).

With regard to claim 44 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the auction ends a fixed period of time after the auction begins (SEE Shkedy column 22, line 61-column 23, line 28).

With regard to claim 45 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 further comprising receiving at the computer site a command from the at least one buyer to try to end the auction for the at least one buyer wherein a successful seller of the value amount for the at least one buyer can be

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declared before the preset auction expiration time (SEE Shkedy column 25, line 20-column 26, line 45).

With regard to claim 46 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the server is further programmed to receive a command from the at least one buyer to try to end the auction for the at least one buyer wherein a successful seller of the value amount for the at least one buyer can be declared before the end of the auction (SEE Shkedy column 26, lines 46-64).

With regard to claim 47 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the successful seller is determined by the buyer's pre-defined conditions (SEE Shkedy column 27, line 8-column 27, line 62).

With regard to claim 48 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the seller with the highest bid for discount rate is the successful seller (SEE Shkedy column 28, line 62-column 29, line 18).

With regard to claim 49 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein there is more than one successful

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seller for a given auction (SEE Shkedy column 29, line25-column 32, line 10).

With regard to claim 50 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein a buyer account is assigned to the registered buyer (SEE Shkedy column 6, line 18-column 7, line 4).

With regard to claim 51 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 50 wherein the buyer account includes various inter-linked sub-accounts (SEE Shkedy column 17, lines 23-60).

With regard to claim 52 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 51 wherein the sub-accounts are linked to at least one external account of the registered buyer held by a financial institution (SEE Shkedy column 18, lines 23-36).

With regard to claim 53 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 52 wherein the buyer's funds can be transferred between the various sub-accounts and also between the sub-accounts and external accounts held by other financial institutions (SEE Shkedy column 20, lines 21-35).

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With regard to claim 54 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 53 wherein the registered buyer can transfer funds or reassign buying power amounts to the account of another registered buyer or a registered seller (SEE Shkedy column 21, lines 3-45).

With regard to claim 55 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein a seller account is assigned to each registered seller(SEE Shkedy column 21, lines 52-column 22, line 25).

With regard to claim 56 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 55 wherein the seller account includes various inter-linked sub-accounts (SEE Shkedy column 3, line 1-column 4, line 59, and column 17, line 23-column 18, line 36).

With regard to claim 57 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 56 wherein the sub-accounts are linked to at least one external account of the at least one seller held by a financial institution (SEE Shkedy column 21, lines 3-45).

With regard to claim 58 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 57 wherein the seller's funds can be transferred between the various sub-accounts and also between the sub-accounts and external accounts held by other financial institutions (SEE Shkedy column 21 , line 52-column 22, line 7).

With regard to claim 59 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 58 wherein the at least one registered seller can transfer funds or reassign buying power amounts to the account of another registered buyer or a registered seller (SEE Shkedy column 22, lines 8-25).

With regard to claim 60 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the server is further programmed to receive a bidding table for at least one seller in which the at least one seller commits to a sequence of bids corresponding to a sequence of value amounts for a given category (SEE Shkedy column 22, line 61-column 23, line 50).

With regard to claim 61 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein each of the sellers is pre-

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approved to sell the specified category of items (SEE Shkedy column 23, line 51-column 24, line 45).

With regard to claim 62 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the auction ends an undetermined period of time after the auction begins (SEE Shkedy column 17, line 23-column 18, line 36).

6. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shkedy in view of Applicant's admitted prior art and "ECOMMERCE / BUYING SERVICE COUNTS ON STRENGTH IN NUMBERS" THE WASHINGTON POST. Newsday (combined editions).

With regard to apparatus claim 63 the combination of Shkedy and Applicants admitted prior art was found already above in claims 1-62 to read on most of the limitations of apparatus claim 63 .

The combination of Shkedy and Applicants admitted prior art does not directly teach "negotiating discount credits between sellers offering at least one pre-defined category of goods or service items and buyers wishing to purchase goods or service items selected from said category" and "buyers in communicating willingness to purchase items selected from a pre-defined category at a negotiated category discount". Shkedy instead only teaches of a single seller in column 7, line 26-41 an

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example wherein the whole category of Office Supply is discounted 5% for a collective buyer pool is pre-negotiated and also see Shkedy column 10 lines 19-20, "discount schedule for large quantities etc."

THE WASHINGTON POST teaches; "Instead of making consumers compete, as they do in auctions, Accompany allows them to cooperate by negotiating volume discounts on their behalf. Prices drop as more buyers sign up"..... "How will it work? Say you want a Palm Pilot. You go to www.accompany.com and find a "buy cycle" for a particular model. That's what Accompany calls the period of time an item is offered, and it is illustrated with a graphic showing the current number of committed buyers, the SCHEDULE OF DISCOUNTS that will kick in as more people join the group and the time remaining."

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Shkedy and Applicants admitted prior art to pre-negotiate with multiple sellers as suggested by THE WASHINGTON POST because to do so will increase the chances of getting the best discount.

In addition Shkedy teaches "a first interface" in figure 1 item 350 "SELLER MODEM" and a second interface item 300 "SELLER

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INTERFACE", with further regard to claim 63 the auction system further having a compilation system that analyzes the bid data to present information to sellers through the second interface indicative of the aggregate commitment amounts associated with different requested discounts (see THE WASHINGTON POST "That's what Accompany calls the period of time an item is offered, and it's illustrated with a graphic showing the current number of committed buyers, the SCHEDULE OF DISCOUNTS that will kick in as more people join the group and the time remaining.")

(10) Response to Argument

In Response to appellant's arguments that the benefits associated with the fundamental differences including the separation of the buying transaction(1) from the process of selecting the exact variation/options of the item and (2) from the process of redeeming the item and that these benefits are absent in the prior art. The steps disclosed by the appellant are shown in Figs 5-10 in the Shkedy reference. The steps occur at different points in time during the processing of the order from when the buyer logs onto the system until the point that the buyer takes delivery of the item. Therefore, the benefits asserted by the appellant are obvious in view of Shkedy.

In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., Shkedy teaches away from the claimed invention because when generating an FPO, a buyer in Shkedy must select the specific variations or options, e.g., Dell Dimension XPA R450 Pentium II processor at 450 MHZ, from the category of items. e.g., computers. And in contrast to Shkedy, the appellant's invention enables the separation of the transaction from the process of selecting the exact variations or options of the item purchased) are not recited in the rejected claim(s). Although the claims

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are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to the appellant's argument regarding the above mentioned separation of the transaction, the appellant states "After the close of the auction and after the buyer's accounts are debited for the amount of their declared spending amount less the discount rate i.e. after the transaction, a buyer can visit the seller and select/redeem the specific vehicle..." (emphasis added). However, the claims do not reflect this feature (i.e. sequential order of the transaction and selecting/redeeming the specific vehicle as stated by appellant. The claims state that each transaction is separate in time from the process of selecting and redeeming. Therefore, the claims do not exclude the selection of the vehicle prior to the transaction as implied by Shkedy, see col. 6, lines 53-63. Shkedy discloses "Various methods of payment may be utilized by the invention..." and "the payment system may also involve the use of an escrow account associated with the buyer wherein funds advanced by the buyer to cover the purchase of the desired good can be kept pending delivery of the goods by the selected seller. Moreover, the timing of payment to the seller can be varied." This clearly shows that the each transaction is

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separate in time from the process of selecting and redeeming as claimed by the appellant. Further, the appellant's attention is directed to Fig. 5 in the Shkedy reference. Figure 5 shows that each step in a transaction occurs at different times. One step concerns selecting a category of goods 505, the next step shows selecting a specific item 510, the next step shows selecting attributes of the item 520... and another step includes the buyer accepting the terms of the purchase order. These steps occur at different points in time. In addition, as shown in Fig. 5, each transaction i.e. purchasing office supplies, or purchasing an automobile... are separate transactions and occur at different points in time.

In response to the appellant's argument that Shkedy teaches away from appellant's invention because sellers in Shkedy's method have no need for or access to buyer discount rates. The appellant's attention is directed to col. 7, lines 21-25 where Shkedy discloses "In one embodiment of the present invention buyers could indicate a minimum discount off the maximum offer price provided by the central controller 200 that a buyer would be willing to accept. The seller would then be notified of a maximum price he had to beat in order to bid." (emphasis added). As disclosed by Shkedy, the maximum price includes a buyer specified discount rate and as such, it would be obvious that a

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seller would be able to calculate the discount being applied to the retail price.

In response to the appellant's argument that Claims 1 and 32 do not stand or fall together. Claim 32 recites all the limitations of claim 1 and in addition, those limitations not recited in claim 1, were shown by the Examiner to be rejected by Shkedy in the final office action pp. 13-14. The Final office action shows that Shkedy discloses a set of related documents and associated files (database fig. 2), a central controller located on a server (col. 5, lines 5-6, and fig.1).

In response the appellant's argument regarding claim 63 and that the Washington Post reference does not inherently disclose soliciting "bids from multiple sellers." The Washington Post article discloses that Accompany negotiates volume discounts on the consumer's behalf. It is obvious that in order for Accompany to exist, it must solicit business from willing sellers.

In response to the appellant's argument that the Washington Post reference does not disclose "the auction system further having a compilation system that analyzes the bid data to present information to sellers through the second interface indicative of the aggregate commitment amounts associated with different requested discounts." Accompany pre-negotiates with

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sellers, therefore it is obvious that the bid data is analyzed and presented to the sellers. It is in the best interest of the seller to be aware of the price at which their products are selling. Price and quantity are key components of a transaction and as such are made part of pre-negotiations and final settlement.

In response to the appellant's argument regarding the Washington Post reference does not teach or suggest pre-negotiating "with multiple sellers" but rather suggests a method for buyers to cooperate by "negotiating volume discounts" and that the Washington Post article teaches away from pre-negotiating "with multiple sellers" because the "schedule of discounts that will kick in as more people join the group" are from a single seller. The appellant's attention is directed to The Washington Post reference, p. 2, para. 2, "The service plans to launch...Since Accompany doesn't handle the products itself (distributor Tech Data Corp. is to ship them directly to buyers)..." The article states that currently, Accompany has one distributor of 50 or fewer items for sale (emphasis added). The article does not disclose that there is only one seller. It is obvious that it would be in the best interest of Accompany to deal with multiple sellers in order to remain competitive and offer the consumers the best discounts.

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(11) Evidence Appendix

None.


(12) Related Proceeding(s) Appendix


None.

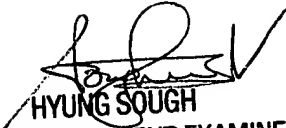
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:

Hyung Sough 

Frantzy Poinvil 


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